IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

L.P.A.No. 452 of 2004

in

Writ Petition No. l75 of 2004

Vijay Kumar L Kabir . appellant

vs

N R C Ltd Thane ..respondent

Mr.M.N. Ganguli for appellant

Mr. P.K.Rele for Piyush Shah for respondent nos.2 and 3

CORAM;A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated 22.ll.2004

P C:

Heard advocates.

l. This matter has a chequred history. The appellant is an employee of respondents.In November l996 the appellant was issued a chargesheet on certain charges and he was put under suspension . The domestic inquiry was conducted into the charges levelled against the appellant and the inquiry officer submitted his report. The appellant was

found guilty of two charges of misconduct out of three charges contained in the chargesheet. Apprehending his dismissal the appellant filed Complaint (ULP) No. l25 of l997 under Item l of Schedule IV of the MRTU and PULP Act, l97l. The labour court refused interim relief to the appellant. In Revision Application No l00 of l998 preferred by the appellant, the industrial court vide order dated 3.ll.l998 directed that the appellant's services shall not be terminated till the complaint is finally heard and disposed of.

2. On 8.6.l999 the labour court passed an order holding that the inquiry was not fair and proper. Against the said order the respondents filed a revision application being Revision Application (ULP) No. 58 of l999 before the industrial court and the said revision application is pending till date.

3. In the meantime the labour court passed interim order dated 2l.l.l999 directing the respondents to pay subsistence allowance at the rate of 75% of the wages from 5.ll.l998 till hearing and final disposal of the complaint and to disclose their decision on the finding of the Inquiry Officer. This order was challenged by the respondents in

Revision Application (ULP) No. l0 of l999 before the industrial court. The industrial court vide order dated l7.2.l999 stayed the order of the labour court and directed the appellant to approach the appropriate forum for relief of payment of subsistence allowance. Consequently the appellant filed Complaint (ULP) No. 244 of l999. This complaint was dismissed by the labour court on 26.7.2002. Against the order of the industrial court the appellant filed writ petition being Writ Petition No.623l of 2003. The learned single Judge allowed the said writ petition by judgment and order dated l3.l0.2003 and the order of the industrial court was quashed and set aside and the respondents were directed to pay to the appellant subsistence allowance with effect from 5.ll.l998 and pay R.3000 as costs. Against this order respondents filed Letters Patent Appeal No. l37 of 2003. The said appeal is admitted and the impugned order came to be stayed.

4. Revision Application (ULP) No. l0 of l999 filed by the respondents against the interim order dated 2l.l.l999 passed by the labour court came to be disposed of by the industrial court on l.8.2003. Against this order respondents preferred writ petition being Writ Petition No.l75 of 2004 before

the learned single Judge which came to be disposed of by the learned single Judge on 23.2.2004. By his order the learned single Judge directed that final decision taken by the respondents should be first communicated forthwith to the employee and thereafter the employer should also comply with the directions of disclosing the same to the court and on receipt of the final decision the employee will be at liberty either to amend the existing complaint or file fresh complaint impugning the final decision if the same is adverse to the interest and if the decision is adverse to the employee same will not be given effect for a period of 8 weeks. The legality and validity of this order is challenged in the present appeal.

5. Mr Ganguly appearing for the appellant urged that the learned single Judge has committed an error in permitting the respondents to take final decision on the inquiry. He submitted that in the Revision Application No.l00 of l998 filed by the appellant order has been passed restraining the respondents from passing any order in the inquiry and the respondents have not challenged the said order and,therefore same has become final and binding on the respondents. It is also submitted by him that the labour court by order dated

8.6.l999 in Complaint (ULP) No. l25 of l997 held that the inquiry conducted against the appellant was not fair and proper in which event any action that may be taken on the basis of the said inquiry should fall flat and of no consequence. We are not inclined to interfere with the order of the learned single Judge which is only an interlocutory order. The main complaint is pending before the labour court and the appellant is free to agitate all the contentions in the pending complaint. The appellant has already amended the complaint as per the direction of the learned single Judge. Therefore it will not be proper to interfere with the order of the learned single Judge at this belated stage. We therefore dismiss the appeal with liberty to the appellant to agitate all his contentions before the labour court.